

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Executive Office

SUBMITTAL DATE: March 24, 2003

SUBJECT: Position on the Project KidSafe legislative package, comprised of twelve legislative proposals to give law enforcement tools to protect communities from child predators, provide crucial information to parents and communities, and to ensure that child predators are removed from society.

RECOMMENDED MOTION: That the Board of Supervisors support the Project KidSafe legislative package and direct the Executive Office and the Board's Sacramento representative to further the Board's position.

BACKGROUND: Project KidSafe is a comprehensive effort to enhance child safety by targeting child predators. Under the leadership of Senator Dennis Hollingsworth and Assembly Member Jay Le Suer a package of bills have been introduced in the Legislature. This package provides law enforcement and parents with prevention tools and vital information, as well as imposing stiffer penalties for child predators.

The measures contained in this package would:

1. Broaden the category of sex offenders that the state may file for civil commitment;
2. Limit the reproduction of child pornography evidence for defense during trial consistent with federal standards;
3. Increase the penalty for possession of child pornography from a misdemeanor to an alternate felony/misdemeanor;
4. Increase the penalty for possession of child pornography if person is a convicted sex offender;

(Continued on next page)

Gary M. Christmas

Gary M. Christmas, Legislative Manager

Consent Policy
 Consent Policy
 Department Recommendation:
 Per Executive Office:

FINANCIAL DATA: N/A
CURRENT YEAR COST \$
NET COUNTY COST \$

ANNUAL COST: \$
IN CURRENT YEAR BUDGET: Yes/
 No/
BUDGET ADJUSTMENT Yes/
 No/
FY: No/

SOURCE OF FUNDS:

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

[Signature]

5. Add a special circumstance for the murder of any child under the age of 14;
6. Fund local law enforcement through the Sexual Assault Felony Enforcement Teams with a \$15 million appropriation;
7. Utilize Global Positioning technology to track a class of offenders who currently qualify for extended parole periods;
8. Prohibit any contact or communication with a minor for the purpose of engaging in sexual conduct or abuse (giving prosecutors a tool for prosecuting individuals trying to lure children over the internet);
9. Requires DNA samples from individuals required to register under Megan's Law for conviction of misdemeanor sexual offenses;
10. Creates a one strike punishment when sexual offenses are committed against a minor child;
11. Eliminates the sunset provision for Megan's Law;
12. Increase efforts with schools, law enforcement, and other advocacy groups to promote Project KidSafe at the community level.

Project KidSafe

Prevention – Giving law enforcement tools to protect communities from child predators

Information – Providing crucial information to parents and communities

Penalties – Ensuring that child predators are removed from society

Legislative Agenda

1. Extension of the Sexually Violent Predator Law (AB 730 Spitzer)/ (SB 876 Morrow)

- ❖ Bill: Broaden the category of sex offenders that the state may file for civil commitment. Specifically, allow the state to file for civil commitment if the offender has committed one specified sexual offense if it was against a minor.
- ❖ Current law: Permits the state to petition for a two-year term of civil commitment, post-conviction, for inmates that meet a definition of sexually violent predator. For purposes of this statute, a “predator” is triggered if the person has committed two separate, specified sexual offenses.

2. Child Pornography Evidence (AB 1439 La Suer)/ (SB 877 Hollingsworth)

- ❖ Bill: Limit the reproduction of child pornography evidence for the defense during trial. Legislation would mirror Federal Rules of Criminal Procedure which permit limiting the reproduction of evidence considered contraband, such as child pornography. Federal case law supports such limitation against constitutional attack if the defense is permitted reasonable access to the evidence.
- ❖ Current Law: As illustrated in the Westerfield trial in San Diego County, the defense petitioned for reproduction of child pornography evidence found in Westerfield’s home for their review. The defense was afforded the opportunity to review the material that was in the possession of the prosecution but the prosecution argued the current exemption in PC 311.11 (PC 311.11 prohibits the production of child pornography) only applies to law enforcement and not to the defense. The trial court disagreed and allowed for the reproduction. As stated, federal law has been more permissive in allowing the prosecution to refuse reproduction of child pornography evidence for the defense.

3. Child Pornography Penalties

- A. Bill: Increase the penalty for possession of child pornography from a misdemeanor to an alternate felony/misdemeanor (wobbler). (AB 39, Runner)/ (SB 878 Knight)
- B. Bill: Increase the penalty for possession of child pornography if the person is already a registered sex offender and require a person to register as a sex offender if they are convicted of possession or manufacturing of child pornography. (AB 402 Plescia)/ (SB 879 Margett)

4. **Death Penalty** (AB 1440 Houston)/ (SB 880 Ashburn)

- ❖ Bill: Add a special circumstance for the murder of any child under the age of 14.
- ❖ Current Law: In order to pursue the death penalty, the state must plead and prove the circumstances of the murder fall within a statutory list of special circumstances. For example, in his recent murder trial, David Westerfield received a death penalty sentence because kidnapping is a special circumstance. Westerfield's attorneys argued Danielle was killed in her room and therefore the death penalty should not apply.

5. **Funding of SAFE Teams** (AB 1441 Garcia)/ (SB 52 Hollingsworth)

- ❖ Bill: Fund local law enforcement through the Sexual Assault Felony Enforcement (SAFE) Teams with \$15 million.
- ❖ Current Law: Last year AB 1858 (Hollingsworth) established the SAFE Teams which would provide increased monitoring of high risk sexual offenders as well as resources to address monitoring of Megan's Law registrants. As recently pointed out in an AP story regarding Megan's law, there are many registrants unaccounted for in our communities. Jurisdictions such as San Jose have had success in tracking sex offenders because they utilize Sexual Assault Felony Enforcement (SAFE) Teams and have dedicated resources. The Attorney General has stated it would take an infusion of \$15 million to ensure all jurisdictions would be able to dedicate resources to deal with the problem of monitoring sex offenders.

6. **GPS Tracking for High Risk Sex Offenders** (AB 1442 La Suer/ (SB 881 Hollingsworth)

- ❖ Bill: Utilize GPS technology to track a class of offenders who currently qualify for extended parole periods.
- ❖ Current Law: The Legislature approved extending the normal three-year parole period for specified high risk sex offenders to five-years if funding for the extension was provided. The funding has not been provided and this bill would require the use of GPS technology to trigger the longer parole periods.

7. **Luring Children on the Internet** (AB 1443 La Suer)/ (SB 882 Denham)

- ❖ Bill: This is a reintroduction of a bill from last year's Project KidSafe effort. Specifically, prohibits any contact or communication with a minor for the purpose of engaging in sexual conduct or abuse. This legislation would give prosecutors a tool to hold those accountable for trying to lure children over the Internet.
- ❖ Current Law: While there are some code provisions relating to the issue, it is incomplete in addressing the problem because it waits for direct harm to occur before criminal penalties can be attached. Prosecution of attempts to solicit sexual conduct are often rejected by courts if law enforcement goes undercover after a predator has made contact with a child.

8. DNA Samples for Sexual Misdemeanors in Database (AB 1444 Bates)/ (SB 883 Margett)

- ❖ Bill: Also a reintroduction from last year's Project KidSafe, this bill adds those convicted of misdemeanor sexual offenses for which registration under Megan's Law is required to the list of offenses where DNA samples are taken from the offender and entered into the DNA databank.
- ❖ Current Law: Two samples of blood, saliva, right thumbprints, and full palm prints must be submitted from all persons convicted or found not guilty by reason of insanity of specified crimes. These crimes include felony sex offenses triggering registration as a sex offender. However, many sexual offenders start their criminal careers with misdemeanor type crimes before escalating to more violent sexual crimes.

9. One-Strike for Offenders Targeting Minors (AB 633 Maze)/ (SB 884 Poochigian)

- ❖ Bill: Creates a one-strike punishment when specified sex offenses are committed against a minor. Specifically, this bill would increase the penalties for lewd and lascivious acts committed by use of force, violence, duress, menace or fear of bodily injury, on a child under the age of 14. The bill would also close loopholes in other child sexual assault statutes. This is similar to a bill from last year's Project KidSafe.
- ❖ Current Law: The one-strike law for specified sex offenses only applies when certain aggravating circumstances are present. There are loopholes in the child sexual assault statutes that preclude some prosecutions from resulting in the maximum penalty. This is just another hurdle prosecutors must overcome and fails to recognize the brutality of the act itself.

10. Reforms to Megan's Law (AB 1445 Dutton)/ (SB 885 Knight)

- ❖ Bill: Eliminating the sunset provision for Megan's Law.
- ❖ Current Law: Megan's Law is set to sunset January 1, 2004. Several bills have been introduced and others are in the process of drafting which would amend Megan's Law. This bill is intended as a placeholder to address issues not currently included in other efforts.

11. Prevention Programs and Public Service Announcements (AB 1446 Bates)/ (SB 886 Hollingsworth)

- ❖ Improving Megan's Law is not enough – parents need to have more information about potential dangers for children to eliminate the false sense of security that the Legislature can solve all the problems. Increase efforts with schools, law enforcement, and other advocacy groups to promote Project KidSafe issues at the community level. This would include, but not be limited to, promoting KidSafe fairs and providing education through Public Service Announcements.
- ❖ Utilize public-private partnerships to continue to promote after-school programs that both prevent crime from being committed by juveniles and prevent crime that targets children.